

MONTANA LEGISLATIVE HISTORY

Chapter 94 19 74

Bill H _____ S 453 Original bill & history C

H. Committee on Constitution, Elections & Federal Relations

Hearing Date(s) Feb 18 ☒ C

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Date Out Feb 18 ☒ C

S. Committee on Executive Reorganization

Hearing Date(s) Jan 18 ☒ C

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Jan 18 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

SENATE BILL NO. 453

INTRODUCED BY DESCHAMPS, SIDERIUS (BY REQUEST)

32-1701 THROUGH 32-1703, 77-101 THROUGH 77-163, 77-201
THROUGH 77-214, 77-301, 77-401 THROUGH 77-420, 77-801,
77-901, 77-909 THROUGH 77-911, 77-1101, 77-1201 THROUGH
77-1215, 77-1301 THROUGH 77-1313, 77-1501 THROUGH 77-1508,
82-207 THROUGH 82-211, 82A-1401 THROUGH 82A-1404

A BILL FOR AN ACT ENTITLED: "AN ACT FOR REVISION OF THE
LAWS RELATING TO THE DEPARTMENT OF MILITARY AFFAIRS, AND
PROVIDING THAT THIS ACT IS EFFECTIVE UPON ITS PASSAGE AND
APPROVAL."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-1702, R.C.M. 1947, is amended to
read as follows:

"32-1702. Powers and duties. The ~~said director is~~
~~hereby vested with the following powers and duties~~
department of military affairs shall:

~~(a) To co-operate~~ (1) Cooperate with the agencies of
this and other states and of the federal government which
are connected with national defense, in the formulation and
execution of plans for the rapid and safe movement over the
highways of troops, vehicles of a military nature, and

materials affecting the national defense.

~~(b) To co-ordinate~~ (2) Coordinate the activities of
the ~~Montana-highway-commission, department of highways and~~
~~the Montana-highway patrol, and the registrar of motor~~
~~vehicles--department of law enforcement and public safety~~
DEPARTMENT OF JUSTICE in a manner which will best serve to
effectuate ~~carryout~~ CARRY OUT any such plan for the rapid
and safe movement of troops, vehicles, and materials as
referred to in paragraph ~~(a)~~ (1) of this section.

~~(c) To solicit~~ (3) Solicit the ~~co-operation~~
cooperation of officials of the various political
subdivisions of the state in the proper execution of such
these plans.

~~(d) To take~~ (4) Take HAVE THE AUTHORITY TO TAKE an
inventory, by counties, of the trucks and buses in the
state, publicly and privately owned, which would be
available in case of emergency affecting the national
defense."

Section 2. Section 32-1703, R.C.M. 1947, is amended to
read as follows:

"32-1703. Highway safety and driver training program.
The director department of military affairs may, in
conjunction with any interested public or private agencies,
conduct a highway safety and driver training program as an
aid to the national defense."

1 section 16-2927, and is amended to read as follows:

2 "77-801--16-2927. County clerks to record certificates
3 of discharge. It ~~shall be~~ is the duty of the county clerk of
4 any county of the this state ~~of Montana~~ to record, without
5 charge, in a book kept for that purpose, the certificate of
6 discharge of any an honorably discharged person, regardless
7 of sex, who served with the United States forces ~~in--any--of~~
8 ~~its wars.~~."

9 Section 4. Section 77-901, R.C.M. 1947, is renumbered
10 section 75-8611, and is amended to read as follows:

11 "77-901--75-8611. Honorably discharged veterans--free
12 tuition at university of Montana. All honorably discharged
13 persons who served with the United States forces in any of
14 its wars and who were bona fide residents of the this state
15 ~~of Montana~~ at the time of their entry into ~~said~~ the United
16 States forces shall have free fees and tuition in any and
17 ~~all~~ of the units of the university of Montana, including the
18 law and medical departments, and for extra studies in any of
19 the units of the university of Montana, provided,--however,
20 ~~that--the--provisions--of~~ However, this act ~~shall~~ does not
21 apply to persons who qualify under the provisions of the
22 "Servicemen's Readjustment Act of 1944," being "Public Law
23 346 of the seventy-eighth Congress, chapter 268, second
24 session" and "Public Law 16 of the seventy-eighth Congress,
25 chapter 22, first session," and all acts supplementary and

1 amendatory thereof."

2 Section 5. Section 77-909, R.C.M. 1947, is renumbered
3 section 75-8612, and is amended to read as follows:

4 "77-909--75-8612. War orphans' attendance to be
5 without fees. ~~There shall be established under this act the~~
6 ~~authority of the state--(1)~~ The board of regents of higher
7 education ~~to~~ may waive, the charges for the matriculation,
8 tuition, ~~any~~ and ~~all~~ any educational fees, for ~~such~~ the
9 children (of members of the armed forces of the United
10 States who served on active duty during World War II and/or
11 the Korean or Vietnam conflicts and who, at the time of
12 entry into ~~such~~ the service, had legal residence in this
13 state and who were heretofore, or shall hereafter be, either
14 killed in action or shall have died as a result of injury,
15 disease, or other disability incurred while in the service
16 of the armed forces of the United States,) as are now
17 ~~attending or may hereafter~~ who attend any of the units of
18 the greater university of Montana, provided.

19 ~~(a)--(2)~~ (2) The educational assistance to which an
20 eligible person is entitled to under this act may be
21 afforded him during the period beginning on his eighteenth
22 (18) birthday, or on the successful completion of his
23 secondary schooling, whichever first occurs, and ending on
24 his twenty-third (23) birthday, ~~except that.~~

25 ~~(b)--(3)~~ (3) If he serves on duty with the armed forces as

1 an eligible person after his eighteenth (18) birthday but
 2 before his twenty-third (23) birthday, then ~~such~~ the period
 3 shall end five (5) years after his first discharge or
 4 release from ~~such~~ duty with the armed forces excluding from
 5 ~~such~~ the five (5) years all periods during which the
 6 eligible person served on active duty before August 1, 1963,
 7 pursuant to ~~(1)~~ (a) a call or order thereto issued to him as
 8 a reserve after July 30, 1961, or ~~(2)~~ (b) an extension of an
 9 enlistment, appointment or period of duty with the armed
 10 forces ~~pursuant to~~ under the laws of the United States, ~~of~~
 11 ~~America; however, in no event shall such~~ This period may not
 12 be extended beyond his thirty-first (31) birthday by reason
 13 of this paragraph."

14 Section 6. Section 77-910, R.C.M. 1947, is renumbered
 15 section 75-8613, and is amended to read as follows:

16 "~~77-910--75-8613~~. Board of regents of higher education
 17 to determine eligibility. The ~~state~~ board of regents of
 18 higher education shall determine the eligibility of ~~any-such~~
 19 a child who shall-make makes application for the benefits
 20 provided for in this act, ~~and-a~~ A finding by the United
 21 States veterans' administration that ~~any-such a~~ member was
 22 killed in action or died as the result of injury or other
 23 disability incurred in action ~~shall-be~~ is binding upon ~~said~~
 24 the board, but in the absence of such a finding ~~said the~~
 25 ~~board of education~~ shall determine the facts."

1 Section 7. Section 77-911, R.C.M. 1947, is renumbered
 2 section 75-8614, and is amended to read as follows:

3 "~~77-911--75-8614~~. Supervision of attendance and
 4 charges. The ~~state~~ board of regents of higher education
 5 shall satisfy itself of the attendance of ~~any-such a~~ a child
 6 at ~~any-such an~~ an institution."

7 Section 8. Section 77-1302, R.C.M. 1947, is renumbered
 8 section 77-2301, and is amended to read as follows:

9 "~~77-1302--77-2301~~. Policy and purpose. Because of the
 10 existing and increasing possibility of the occurrence of
 11 disasters or emergencies of unprecedented size and
 12 destructiveness resulting from enemy attack, sabotage, or
 13 other hostile action, and natural disasters, and in order to
 14 insure that preparation of this state will be adequate to
 15 deal with such disasters or emergencies, and generally to
 16 provide for the common defense and to protect the public
 17 peace, health, and safety and to preserve the lives and
 18 property of the people of this state, it is hereby found and
 19 declared to be necessary:

20 (1) ~~To create-a-state-civil--defense--agency,--and--to~~
 21 authorize the creation of local organizations for civil
 22 defense in the political subdivisions of the state; and

23 (2) To provide for the rendering of mutual aid among
 24 the political subdivisions of the state, and with other
 25 states, and with the federal government with respect to

1 carrying out of civil defense functions."

2 Section 9. Section 77-1303, R.C.M. 1947, is renumbered
3 section 77-2302, and is amended to read as follows:

4 "~~77-1303--~~77-2302. Definitions. As used in this act
5 chapter the term "civil defense" ~~shall--mean~~ means the
6 preparation for and the carrying out of emergency functions,
7 other than functions for which military forces or other
8 federal agencies are primarily responsible, to prevent,
9 minimize, and repair injury and damage resulting from
10 disasters caused by enemy attack, sabotage, or other hostile
11 action, and catastrophes of all types which shall endanger
12 any community in the state, or the lives or property of the
13 inhabitants thereof, including storms, floods, explosions,
14 earthquakes, epidemics, and fires. These functions include
15 fire-fighting services, police services, medical and health
16 services, rescue, engineering, air raid warning services,
17 communications, radiological, chemical and other special
18 weapons of defense, evacuation of persons from stricken
19 areas, emergency welfare services (civilian war aid),
20 emergency transportation, plant protection, temporary
21 restoration of public utility services, and other functions
22 related to civilian protection. The term "political
23 subdivisions" ~~shall--mean~~ means the counties, cities, towns
24 and villages in the this state of Montana."

25 Section 10. Section 77-1304, R.C.M. 1947, is

1 renumbered section 77-2303, and is amended to read as
2 follows:

3 "~~77-1304--~~77-2303. ~~State--civil--defense--agency--(a)~~
4 ~~There-is-hereby-created--in--the--state--adjutant--general's~~
5 ~~department--a-civil-defense-agency--with-a-director-of-civil~~
6 ~~defense--(hereinafter-called-the--"director")--who-shall-be-the~~
7 ~~head--thereof--The-director-shall-be-appointed-by--and-shall~~
8 ~~hold--office--at--the-pleasure-of-the-governor--and-shall-be~~
9 ~~compensated-at-a-salary--to-be--fixed--by--the--legislative~~
10 ~~assembly--in--the-appropriation-to-the-adjutant-general--if~~
11 ~~the-legislative-assembly-does-not-specify-the-maximum-salary~~
12 ~~of-the-director-of-civil-defense--any-increase-in-the-salary~~
13 ~~of-the-director-must-be-approved-by-the-board-of-examiners.~~
14 ~~Before--approving-any-salary-increase-the-board-of-examiners~~
15 ~~shall-review-the-salaries-of-comparable-positions-in-Montana~~
16 ~~state-government--other-states--and-private--industry--The~~
17 ~~director--shall--devote--his--full--time--and--energies--to--the~~
18 ~~duties--of--director--of--civilian--defense--including~~
19 ~~co-operation--and--co-ordination--with--the-commander-of-the~~
20 ~~home-guard.~~

21 ~~(b)--The-director-may-employ-such-technical--clerical,~~
22 ~~stenographic-and-other-personnel-and-fix-their-compensation,~~
23 ~~and--may-make-such-expenditures-as-may-be-necessary-to-carry~~
24 ~~out-the-purposes-of-this-act.~~

25 ~~(c)--The-director-and-other-personnel--of--the--civil~~

defense--agency--shall--be--provided-with-appropriate-office
space,--furniture,--equipment,--supplies,--stationery--and
printing--in--the--same--manner-as-provided-for-personnel-of
other-state-agencies.

~~(d)~~--(a) The director shall be the executive head of
the civil defense agency and shall be The department of
military affairs is responsible to the governor for carrying
out the program for civil defense of this state. He The
department shall ~~co-ordinate~~ coordinate the activities of
all organizations for civil defense within the state, and
shall maintain liaison with and ~~co-operate~~ cooperate with
civil defense agencies and organizations of other states, of
the federal government, and Canada, and shall have such any
additional authority, duties, and responsibilities
authorized by this act chapter as may be prescribed by the
governor.

~~(e)~~--(b) In providing assistance hereunder under this
chapter, state agencies shall ~~co-operate~~ cooperate to the
fullest extent possible with each other and with local
governments, relief agencies, and the American National Red
Cross, but nothing contained in this act shall be construed
~~to limit chapter limits~~ or in any way ~~affect~~ affects the
responsibilities of the American National Red Cross under
the act approved January 5, 1905 (33 Stat. 559), as
amended."

Section 11. Section 77-1306, R.C.M. 1947, is
renumbered section 77-2304, and is amended to read as
follows:

~~"77-1306--77-2304.~~ Civil defense duties of the
governor. The governor shall have general direction and
~~control of the civil defense agency, and shall be is~~
responsible for the carrying out of the provisions of this
~~act, and chapter.~~ The governor shall utilize the services
and facilities of the existing officers and agencies of the
state, and all such officers and agencies shall ~~co-operate~~
cooperate with and extend their services and facilities to
the governor as he may request in the carrying out of the
purposes of this act chapter."

Section 12. Section 77-1307, R.C.M. 1947, is
renumbered section 77-2305, and is amended to read as
follows:

~~"77-1307--77-2305.~~ Duties of ~~director~~ department. ~~(1)~~
~~He--prepare~~ The department shall (1) Prepare a comprehensive
plan and program for the civil defense of this state, such
This plan and program ~~to~~ shall be integrated into and
~~co-ordinated~~ coordinated with the civil defense plans of the
federal government, other states, and Canada, to the fullest
possible extent, and to ~~co-ordinate~~ coordinate the
preparation of plans and programs for civil defense by the
political subdivisions of this state.

(2) ~~Co-sponsor~~ Sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to above.

(3) In accordance with ~~such~~ the plan and program for the civil defense of this state, ~~to~~ ascertain the requirements of the state or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and ~~to~~ plan for the procurement of supplies, medicine, materials, and equipment that may be necessary, ~~to~~ It shall make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this act, ~~to~~ It shall institute training programs and public information programs, and ~~to~~ take all other preparatory steps, including the partial or full mobilizations of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need."

Section 13. Section 77-1308, R.C.M. 1947, is renumbered section 77-2306, and is amended to read as follows:

~~"77-1308--77-2306.~~ Mutual-aid arrangements. (1) The director of each local organization of civil defense may develop or cause to be developed mutual-aid arrangements,

with other public and private agencies within this state for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. ~~Such~~ These arrangements shall be consistent with the state civil defense plan and program, and in time of emergency ~~it--shall~~ ~~be--the-duty-of~~ each local organization for civil defense ~~to~~ shall render assistance in accordance with the provisions of ~~such the~~ mutual-aid arrangements.

(2) The director of each local organization for civil defense may assist in negotiation of reciprocal mutual-aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof, and shall carry out arrangements or any such agreements or any such agreement relating to the local and political subdivision."

Section 14. Section 77-1309, R.C.M. 1947, is renumbered section 77-2307, and is amended to read as follows:

~~"77-1309--77-2307.~~ Local organization for civil defense. ~~(a)~~ (1) Each political subdivision of this state ~~is~~ ~~hereby--authorized--and--directed--to~~ shall establish a local organization for civil defense in accordance with the state civil defense plan and program. The executive officer or governing body of the political subdivisions ~~is--authorized~~ ~~to~~ may appoint a director who shall have direct

responsibility for the organization, administration, and operation of ~~such the~~ local organization for civil defense, subject to the direction and control of ~~such the~~ executive officer or governing body. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivisions within which it is organized.

~~(b)--(2)~~ Each political subdivision shall ~~have--the duty-and-authority:~~

~~(1)--(a)~~ ~~To--direct~~ Direct and ~~co-ordinate~~ coordinate the development of civil defense plans and programs in accordance with the policies and plans set by the federal ~~and-state~~ civil defense ~~agencies,~~ agency and the department of military affairs;

~~(2)--(b)~~ ~~To---~~ appoint Appoint, employ, remove, or provide without compensation, voluntary air raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian defense workers;

~~(3)--(c)~~ ~~To-establish~~ Establish a primary and one or more secondary control centers to serve as command posts during an emergency;

~~(4)--(d)~~ ~~To-budget~~ Budget for and appropriate funds for the local administration of this ~~act~~ chapter and local civil defense organizations."

Section 15. Section 77-1310, R.C.M. 1947, is

renumbered section 77-2308, and is amended to read as follows:

~~"77-1310--77-2308.~~ Immunity from liability. ~~(a)~~ (1) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker, or member of any agency engaged in civilian defense activity. ~~The foregoing--shall~~ This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workmen's compensation law or any pension law or any act of Congress.

~~(b)--(2)~~ Neither the state nor any political subdivision of the state, nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity, NOR THE OWNERS OF FACILITIES USED FOR CIVIL DEFENSE SHELTERS, PURSUANT TO A FALLOUT SHELTER LICENSE OR PRIVILEGE AGREEMENT AND WHILE complying with or reasonably attempting to comply with this ~~act~~ chapter, or any order, rule, or regulation promulgated ~~pursuant-to~~ under the provisions of this ~~act~~ CHAPTER, or pursuant to any

1 relating to blackout or other precautionary measures enacted
2 by any political subdivisions of the state, shall be liable
3 for the death of or injury to persons, or for damage to
4 property, as a result of any such activity."

5 Section 16. Section 77-1311, R.C.M. 1947, is
6 renumbered section 77-2309, and is amended to read as
7 follows:

8 "~~77-1311--77-2309~~. Authority to accept services,
9 gifts, grants, and loans. Whenever the federal government or
10 any agency or officer thereof, or any person, firm, or
11 corporation shall offer to the state, or through the state
12 to any political subdivision thereof, services, equipment,
13 supplies, materials, or funds by way of gift, grant, or
14 loan, for purposes of civil defense, the state, acting
15 through the governor, or ~~such the~~ political subdivision,
16 acting through its executive officer or governing body, may
17 accept ~~such the~~ offer and upon ~~such the~~ acceptance the
18 governor of the state or executive officer or governing body
19 of ~~such the~~ political subdivision may authorize any officer
20 of the state or of the political subdivision, as the case
21 may be, to receive ~~such the~~ services, equipment, supplies,
22 materials, or funds on behalf of the state or such political
23 subdivision, and subject to the terms of the offer and the
24 rules and regulations, if any, of the agency making the
25 offer."

1 Section 17. Section 77-1312, R.C.M. 1947, is
2 renumbered section 77-2310, and is amended to read as
3 follows:

4 "~~77-1312--77-2310~~. Political activity prohibited. No
5 An organization for civil defense established under this ~~act~~
6 ~~shall~~ chapter may not participate in any form of political
7 activity, nor ~~shall~~ may it be employed directly or
8 indirectly for political purposes."

9 Section 18. Section 77-1313, R.C.M. 1947, is
10 renumbered section 77-2311, and is amended to read as
11 follows:

12 "~~77-1313--77-2311~~. Civil defense personnel. No A
13 person ~~shall~~ may not be employed or associated in any
14 capacity in any civil defense organization established under
15 this ~~act~~ chapter who advocates a change by force or violence
16 in the constitutional form of the government of the United
17 States or in this state or the overthrow of any government
18 in the United States by force or violence, or who has been
19 convicted of or is under indictment or information charging
20 any subversive act against the United States. Each person
21 who is appointed to serve in an organization for civil
22 defense shall, before entering upon his duties, take an
23 oath, in writing, before a person authorized to administer
24 oaths in this state, which oath shall be substantially as
25 follows:

1 "I, do solemnly swear (or affirm) that I will
 2 support and defend the Constitution of the United States and
 3 the Constitution of the State of Montana, against all
 4 enemies, foreign and domestic; that I will bear true faith
 5 and allegiance to the same; that I take this obligation
 6 freely, without any mental reservation or purpose of
 7 evasion; and that I will well and faithfully discharge the
 8 duties upon which I am about to enter. And I do further
 9 swear (or affirm) that I do not advocate nor am I a member
 10 of any political party or organization that advocates the
 11 overthrow of the government of the United States or of this
 12 state by force or violence; and that during such time as I
 13 am a member of the Montana civil defense agency I will not
 14 advocate nor become a member of any political party or
 15 organization that advocates the overthrow of the government
 16 of the United States or of this state by force or violence."

17 Section 19. Section 77-1502, R.C.M. 1947, is
 18 renumbered section 77-2401, and is amended to read as
 19 follows:

20 "~~77-1502--77-2401~~. Legislative findings--policy of
 21 state. (1) The legislature recognizes that an attack upon
 22 the United States is a possibility; that such attack might
 23 be of unprecedented size and destructiveness; that a
 24 considerable period of time may elapse after an attack
 25 before federal operational control over the management of

1 resources can be instituted; and that federal planning and
 2 activities with respect to post-attack recovery and
 3 rehabilitation necessarily are predicated on the ability of
 4 the states and their political subdivisions to prepare for,
 5 and respond promptly to, the problems created by an attack.
 6 Therefore, it is hereby found and declared to be necessary
 7 to confer upon the governor and upon the executive heads of
 8 governing bodies of political subdivisions of this state the
 9 emergency powers provided for in this chapter.

10 ~~{a}--To--create--an--office---of---emergency---resource~~
 11 ~~management--for--the--execution--of--a--plan--for--emergency~~
 12 ~~resource-management;~~

13 ~~{b}--To--confer--upon--the--governor--and--upon--the--executive~~
 14 ~~heads--of--governing--bodies--of--political--subdivisions--of--the~~
 15 ~~state--the--emergency--powers--provided--herein;~~

16 (2) It is further declared to be the purpose of this
 17 ~~act chapter~~ and the policy of this state that all resource
 18 management functions of this state be ~~co-ordinated~~
 19 coordinated to the maximum extent with the comparable
 20 functions of the federal government, of other states and
 21 localities, and of private agencies to the end that the most
 22 effective preparation and use may be made of available man
 23 power, resources, and facilities in an emergency."

24 Section 20. Section 77-1503, R.C.M. 1947, is
 25 renumbered section 77-2402, and is amended to read as

1 follows:

2 "~~77-1503--77-2402~~. Definition of terms. ~~As--used-in~~
3 ~~this--act,--unless~~ Unless the context ~~clearly--indicates~~
4 ~~requires otherwise,~~ in this chapter:

5 (1) "Emergency Resources Management Plan" ~~shall-mean~~
6 ~~means~~ that plan prepared by the ~~state--emergency--resources~~
7 ~~planning--committee~~ department of military affairs, approved
8 by the federal office of emergency planning, and adopted by
9 the governor, which sets forth the organization,
10 administration, and functions for the emergency management
11 by the state government of essential resources and economic
12 stabilization within the state. The plan shall provide an
13 emergency organization and emergency administrative policies
14 and procedures for the conservation, allocation,
15 distribution, and use of essential resources available to
16 the state following a civil defense emergency such as an
17 attack upon the United States. It shall be supplemental to
18 the national plan for emergency preparedness adopted by the
19 president of the United States, and shall become operative
20 upon the establishment of a civil defense emergency. To the
21 extent that the federal government is either incapable of or
22 not prepared to conduct its emergency resources management
23 program, the state plan will substitute for and replace the
24 federal program until such time as the federal program
25 becomes effective in the state.

1 (2) "Enemy attack" means an actual attack by a foreign
2 nation by hostile air raids, or other forms of warfare, upon
3 this state or any other state or territory of the United
4 States.

5 (3) "Political subdivision" ~~shall--mean~~ means any
6 county, city, town, or township of the state."

7 Section 21. Section 77-1505, R.C.M. 1947, is
8 renumbered section 77-2403, and is amended to read as
9 follows:

10 "~~77-1505~~77-2403. Governor's powers and duties under
11 act. (1) The governor ~~shall-have~~ has general direction and
12 control of the emergency resources management within this
13 state and all officers, boards, agencies, individuals, or
14 groups established under the emergency resource management
15 plan.

16 (2) In performing his duties under this ~~act~~ chapter,
17 the governor ~~is-authorized-to-co-operate~~ may cooperate with
18 the federal government, with other states, and with private
19 agencies in all matters pertaining to the emergency
20 management of resources.

21 (3) In performing his duties under this ~~act~~ chapter,
22 and to effect its policies and purpose, the governor ~~is~~
23 ~~further--authorized--and--empowered--to~~ may make, amend, and
24 rescind the necessary orders, rules, and regulations to
25 carry out ~~the--provisions--of~~ this ~~act~~ chapter within the

1 limits of authority conferred upon him herein, with due
2 consideration of the emergency resources management plans of
3 the federal government."

4 Section 22. Section 77-1506, R.C.M. 1947, is
5 renumbered section 77-2404, and is amended to read as
6 follows:

7 "~~77-1506~~--77-2404. Proclamation of emergency --
8 governor's powers during emergency. (1) Following an attack,
9 the governor, if he finds such action necessary to deal with
10 the danger to the public safety caused thereby or to aid in
11 the post-attack recovery or rehabilitation of the United
12 States or any part thereof, shall declare by proclamation
13 the existence of a post-attack recovery and rehabilitation
14 emergency. Any such proclamation shall be ineffectual,
15 unless the legislature is then in session or the governor
16 simultaneously issues an order convening the legislature in
17 special session within forty-five (45) days.

18 (2) During the period when the proclamation issued
19 ~~pursuant to~~ under subsection (1) of this section is in
20 force, or during the continuance of any emergency declared
21 by the president of the United States or the congress
22 calling for post-attack recovery and rehabilitation
23 activities, subject to the limitations set forth in this ~~act~~
24 chapter, and in a manner consistent with any rules,
25 regulations, or orders and policy guidance issued by the

1 federal government, the governor may issue, amend, and
2 enforce rules, regulations, and orders to:

3 (a) Control, restrict, and regulate by rationing,
4 freezing, use of quotas, prohibitions on shipments, price
5 fixing, allocation or other means, the use, sale or
6 distribution of food, feed, fuel, clothing and other
7 commodities, materials, goods or services;

8 (b) Prescribe and direct activities in connection with
9 but not limited to use, conservation, salvage, and
10 prevention of waste of materials, services, and facilities,
11 including production, transportation, power, and
12 communication facilities, training and supply of labor,
13 utilization of industrial plants, health and medical care,
14 nutrition, housing, including the use of existing and
15 private facilities, rehabilitation, education, welfare,
16 child care, recreation, consumer protection, and other
17 essential civil needs; and

18 (c) Take such other action as may be necessary for the
19 management of resources following an attack.

20 (3) All rules, regulations, and orders issued ~~pursuant~~
21 ~~to~~ under authority conferred by this ~~act~~~~shall~~ chapter have
22 the ~~full-force-and~~ effect of law during the continuance of a
23 proclamation or declaration of emergency as contemplated by
24 this section, when a copy of the rule, regulation, or order
25 is filed in the office of the secretary of state or, if

1 issued by a local or area official, when filed in the office
 2 or offices of the county clerk and recorder. If, by reason
 3 of destruction or disruption attendant upon or resulting
 4 from attack, the filing requirements of this subsection
 5 cannot be met, public notice by such means as may be
 6 available shall be ~~deemed~~ considered a complete and
 7 sufficient substitute. All existing laws, ordinances,
 8 rules, regulations, and orders inconsistent with the
 9 provisions of this ~~act~~ chapter, or any rule, regulation or
 10 order issued under the authority thereof, shall be
 11 inoperative during the period of time and to the extent such
 12 inconsistency exists.

13 (4) Any authority exercised ~~pursuant--to~~ under a
 14 proclamation or emergency contemplated by this section may
 15 be exercised with respect to the entire territory over which
 16 the governor or other official, as the case may be, has
 17 jurisdiction, or as to any specified part thereof.

18 (5) The governor's power and authority to issue a
 19 proclamation following an attack shall be terminated by the
 20 passage of a joint resolution of the legislature or by
 21 declaration of the termination of the emergency by the
 22 president or by the congress; ~~provided-that~~ however the
 23 proclamation shall terminate automatically six (6) months
 24 after issuance and a similar proclamation may not be issued
 25 unless concurrence is given thereto by a joint resolution of

1 the legislature."

2 Section 23. Section 77-1507, R.C.M. 1947, is
 3 renumbered section 77-2405, and is amended to read as
 4 follows:

5 "~~77-1507--~~77-2405. Judicial inquiry as to emergency
 6 proclamation and facts. Every proclamation and the facts
 7 related ~~therein~~ in the proclamation issued under this ~~act~~
 8 ~~shall-be~~ chapter is subject to judicial inquiry by the state
 9 supreme court as to the existence of the facts underlying
 10 the issuance of the proclamation and whether ~~such~~ the action
 11 was reasonable under the circumstances."

12 Section 24. Section 77-1508, R.C.M. 1947, is
 13 renumbered section 77-2406, and is amended to read as
 14 follows:

15 "~~77-1508--~~77-2406. Penalty for violation of rules and
 16 regulations. ~~Any~~ A person violating any of the rules,
 17 regulations or orders adopted and promulgated under section
 18 ~~6--{77-1506}--of--this--act~~ 77-2404 shall, upon conviction
 19 ~~thereof~~, be subject to a fine of not to exceed ten thousand
 20 dollars (\$10,000) or to a term of imprisonment of not to
 21 exceed five (5) years, or both."

22 Section 25. There is a new section to be numbered
 23 77-1601, R.C.M. 1947, which reads as follows:

24 77-1601. Definitions. Unless the context requires
 25 otherwise, in title 77: (1) "Militia" means all the

1 military forces of this state, whether organized or active
2 or inactive.

3 (2) "National guard" means the army national guard and
4 the air national guard.

5 (3) "Officer" means commissioned or warrant officer.

6 Section 26. There is a new section to be numbered
7 77-1602, R.C.M. 1947, which reads as follows:

8 77-1602. Classes of militia. The classes of the
9 militia are: (1) The organized militia, which consists of
10 the national guard and the Montana home guard;

11 (2) The unorganized militia, which consists of the
12 members of the militia who are not members of the organized
13 militia.

14 Section 27. There is a new section to be numbered
15 77-1603, R.C.M. 1947, which reads as follows:

16 77-1603. Federal regulations to govern. Federal laws
17 and regulations, forms, precedents, and usages relating to
18 and governing the armed forces of the United States and the
19 militia, including the Uniform Code of Military Justice,
20 shall, insofar as they are applicable and not inconsistent
21 with the constitution of this state, apply to and govern the
22 military forces of this state.

23 Section 28. There is a new section to be numbered
24 77-1604, R.C.M. 1947, which reads as follows:

25 77-1604. Rules by governor. The governor may

1 prescribe rules to carry out his functions and duties under
2 this title, and the constitution of this state. These rules
3 must conform to any applicable federal laws and regulations.

4 Section 29. There is a new section to be numbered
5 77-1605, R.C.M. 1947, which reads as follows:

6 77-1605. Proclamation of martial rule. When the
7 militia is employed in aid of civil authority, the governor
8 may by proclamation, declare any part of a county or
9 municipality in which troops are serving to be subject to
10 martial rule.

11 Section 30. There is a new section to be numbered
12 77-1606, R.C.M. 1947, which reads as follows:

13 77-1606. Powers and duties of department of military
14 affairs. Under the direction of the governor, the
15 department of military affairs provided for in title 82A,
16 chapter 14 shall: (1) Keep a roster of all active, ~~reserve~~
17 INACTIVE, and retired officers AND ENLISTED PERSONS of the
18 militia of this state;

19 (2) Supervise, administer, and coordinate civil
20 defense and disaster control activities;

21 (3) Recruit, mobilize, administer, train, discipline,
22 equip, and supply the organized militia;

23 (4) Maintain the archives, and keep the records and
24 documents required, by law or regulation, to be filed with
25 the United States department of defense;

(5) Supervise, administer, and coordinate the activities of the selective service system for which the governor is responsible;

(6) Establish and maintain the headquarters required for the militia;

(7) Exercise the powers vested in it, and perform any other duty and function required of it by the governor, and by federal and state laws and regulations.

Section 31. There is a new section to be numbered 77-1701, R.C.M. 1947, which reads as follows:

77-1701. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board, and the nature and scope of examinations, shall be prescribed by federal law or regulation, or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office, or until he is regularly retired, discharged, dismissed, or placed in the reserve.

Section 32. There is a new section to be numbered 77-1702, R.C.M. 1947, which reads as follows:

77-1702. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office: "I, _____, do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of _____ in the _____ upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office, and a new appointment shall be made.

Section 33. There is a new section to be numbered 77-1703, R.C.M. 1947, which reads as follows:

77-1703. Retirement of officers. (1) An officer of the national guard shall be retired by order of the governor, for the following reasons:

(a) Upon reaching his sixtieth (60) birthday; or

(b) His unfitness for military service because of a

1 physical disability.

2 (2) An officer is retired with the grade and rank held
3 by him at the time of retirement.

4 Section 34. There is a new section to be numbered
5 77-1704, R.C.M. 1947, which reads as follows:

6 77-1704. Resignation of officers. An officer may
7 resign, but the resignation is not effective until it has
8 been accepted by the governor.

9 Section 35. There is a new section to be numbered
10 77-1705, R.C.M. 1947, which reads as follows:

11 77-1705. Vacating commissions or warrants. The
12 commission or warrant of an officer shall be vacated: (1)
13 Upon acceptance by the governor of the resignation of the
14 officer; or

15 (2) By an order of the governor discharging the
16 officer for:

17 (a) Failure to maintain his qualifications for federal
18 recognition;

19 (b) The scheduled or actual termination or withdrawal
20 of his federal recognition where federal recognition is a
21 prerequisite for continued service;

22 (c) A change in federal reserve status which makes him
23 ineligible to continue assigned to a unit of the organized
24 militia;

25 (d) His absence from duty without leave for more than

1 three (3) months; or

2 (e) Under the recommendation of a board of examination
3 or the sentence of a court martial.

4 Section 36. There is a new section to be numbered
5 77-1706, R.C.M. 1947, which reads as follows:

6 77-1706. Examination as to fitness. (1) The
7 governor, when he considers it necessary, may order an
8 officer to appear before a board of examination. The board
9 of examination shall consist of three (3) officers, senior
10 in rank to the officer whose fitness for service is under
11 examination. The board may:

12 (a) Inquire into the fitness for military service due
13 to physical disability of an officer under section 77-1703
14 (1) (b).

15 (b) Inquire into the moral character, capacity, and
16 professional fitness of an officer in order to make a
17 recommendation under section 77-1705 (2) (e).

18 (2) The board, under section 77-1703 (1) (b), may
19 recommend the retention of the officer being examined, or
20 his retirement because of a physical inability to perform
21 active service.

22 (3) The board, under section 77-1705 (2) (e), may
23 recommend the discharge and the vacating of his commission
24 or warrant.

25 (4) The findings of the board become effective only

1 upon the approval of the governor.

2 Section 37. There is a new section to be numbered
3 77-1707, R.C.M. 1947, which reads as follows:

4 77-1707. Uniform allowance for officers. (1) Every
5 officer of the organized militia shall, within sixty (60)
6 days from the date of the order whereby he is appointed,
7 provide himself, at his own expense, with the uniforms and
8 equipment prescribed by the department for his rank and
9 assignment.

10 (2) There shall be paid annually on April 1, a uniform
11 allowance to each properly uniformed and equipped officer of
12 the organized militia.

13 Section 38. There is a new section to be numbered
14 77-1708, R.C.M. 1947, which reads as follows:

15 77-1708. Officer need not vacate civil office. A
16 person may be an officer in the militia or in a reserve
17 component of the armed forces of the United States without
18 vacating a civil office or position in this state.

19 Section 39. There is a new section to be numbered
20 77-1801, R.C.M. 1947, which reads as follows:

21 77-1801. Terms of enlistment. Except as otherwise
22 provided by federal law or regulation, enlistments,
23 re-enlistments, and extension of enlistments shall be for
24 periods as prescribed by the department.

25 Section 40. There is a new section to be numbered

1 77-1802, R.C.M. 1947, which reads as follows:

2 77-1802. Oath of enlistment. (1) Except when a
3 comparable oath of enlistment is subscribed to under federal
4 law or regulation, every person who enlists or re-enlists
5 shall take and subscribe to the following oath of
6 enlistment: "I hereby acknowledge to have voluntarily
7 enlisted this _____ day of _____ in the
8 _____ of the United States and the state of Montana
9 for a period of _____ years under the conditions
10 prescribed by law, unless sooner discharged by proper
11 authority. And I do solemnly swear that I will bear true
12 faith and allegiance to the United States of America and to
13 the state of Montana, and that I will serve them honestly
14 and faithfully against all their enemies, and that I will
15 obey the orders of the president of the United States, the
16 governor of the state of Montana, and the officers appointed
17 over me."

18 (2) Any commissioned officer of the organized militia,
19 or any commissioned officer of the armed forces of the
20 United States detailed to duty with any component of the
21 organized militia of this state, may administer the oath of
22 enlistment to enlisted men.

23 Section 41. There is a new section to be numbered
24 77-1803, R.C.M. 1947, which reads as follows:

25 77-1803. Extension of terms of service. If an

1 emergency is declared by the president, congress, the
2 governor, or the legislature, the governor may by
3 proclamation, in accordance with federal and state law and
4 regulation, extend the enlistment of an enlisted member of
5 the organized militia until six (6) months after the
6 termination of that emergency.

7 Section 42. There is a new section to be numbered
8 77-1804, R.C.M. 1947, which reads as follows:

9 77-1804. Retirement of enlisted members. An enlisted
10 member of the national guard shall be retired by order of
11 the governor, for the following reasons: (1) Upon reaching
12 his sixtieth (60) birthday, or

13 (2) His unfitness for military service because of a
14 physical disability.

15 Section 43. There is a new section to be numbered
16 77-1901, R.C.M. 1947, which reads as follows:

17 77-1901. Courts -- composition, jurisdiction, powers,
18 and procedures. The military courts for the militia shall
19 be constituted like similar courts of the armed forces of
20 the United States. They have the jurisdiction and powers,
21 except as to punishments, and shall follow the forms and
22 procedures of those courts. The convening authority for
23 these military courts, and maximum punishments authorized
24 shall be as prescribed by federal and state law and
25 regulation applicable to the national guard.

1 Section 44. There is a new section to be numbered
2 77-1902, R.C.M. 1947, which reads as follows:

3 77-1902. Persons subject. All members of the
4 organized militia, and all other persons lawfully called,
5 ordered, or drafted for duty in the organized militia from
6 the dates they are required by the terms of the call, order,
7 or other directive to serve, are subject to this chapter.

8 Section 45. There is a new section to be numbered
9 77-1903, R.C.M. 1947, which reads as follows:

10 77-1903. Territorial applicability. (1) This chapter
11 is applicable in all places in this state. It also applies
12 to all persons while serving outside this state and while
13 going to and returning from service outside this state.

14 (2) Courts-martial and courts of inquiry may be
15 convened and held in units of the organized militia while
16 serving outside this state. These courts serve with the
17 same jurisdiction and powers as if held in this state.
18 Offenses committed outside this state may be tried and
19 punished either in or out of this state.

20 Section 46. There is a new section to be numbered
21 77-1904, R.C.M. 1947, which reads as follows:

22 77-1904. Persons authorized to execute process. All
23 processes, writs, warrants, and sentences of military courts
24 shall be directed to and executed by any sheriff, or any
25 officer or member of the police department of any county or

1 municipality. These documents shall be in the same form as
2 processes, writs, or warrants issued by civil courts. All
3 officers to whom a process, writ, or warrant is directed
4 shall execute them and make return thereof to the officer
5 issuing them.

6 Section 47. There is a new section to be numbered
7 77-1905, R.C.M. 1947, which reads as follows:

8 77-1905. Confinement of persons committed by military
9 court. The keepers of a municipal or county jail shall
10 receive a person committed to them by a military court, and
11 shall confine them in accordance with the direction of the
12 court.

13 Section 48. There is a new section to be numbered
14 77-1906, R.C.M. 1947, which reads as follows:

15 77-1906. Reporter and witness fees. A witness
16 subpoenaed to appear before a military court shall receive
17 the same fee as provided by law for witnesses appearing in a
18 civil court. The reporter of a court shall be paid for
19 stenographic services the same as are provided by law for
20 similar services in civil courts.

21 Section 49. There is a new section to be numbered
22 77-1907, R.C.M. 1947, which reads as follows:

23 77-1907. Fees of civil officers, records. Fees for
24 services of civil officers shall be the same as provided by
25 law for services in civil courts. Records of all fees,

1 costs, and disbursements shall be kept in the headquarters
2 of the organization concerned.

3 Section 50. There is a new section to be numbered
4 77-1908, R.C.M. 1947, which reads as follows:

5 77-1908. Trial by civil authority; when authorized.
6 In a case where the offense charged is also an offense
7 against civil authority, the convening authority of a courts
8 martial may, upon request of the civil authorities, order
9 the person charged to be turned over to the appropriate
10 civil authorities of this state for trial.

11 Section 51. There is a new section to be numbered
12 77-2001, R.C.M. 1947, which reads as follows:

13 77-2001. Property remains public property. All
14 property issued to organizations and members of the
15 organized militia remains public property.

16 Section 52. There is a new section to be numbered
17 77-2002, R.C.M. 1947, which reads as follows:

18 77-2002. Organized militia called into service --
19 general fund. When the organized militia is ordered into
20 active duty as provided for in article VI, section 13 of the
21 constitution of this state, warrants for pay and expenses
22 shall be drawn upon the general fund of the state.

23 Section 53. There is a new section to be numbered
24 77-2003, R.C.M. 1947, which reads as follows:

25 77-2003. Pay and allowances. (1) An officer ordered

1 into active duty as provided for in article VI, section 13
2 of the constitution of this state, shall receive pay and
3 allowances as prescribed for an officer of corresponding
4 grade and length of service when on active duty in federal
5 service.

6 (2) An enlisted member ordered into active duty as
7 provided for in article VI, section 13 of the constitution
8 of this state, shall receive pay at rates equivalent to
9 twice those allowed for an enlisted member of corresponding
10 grade and length of time when on active duty in federal
11 service. This schedule of pay for enlisted members applies
12 only to the first fifteen (15) days of service. After
13 fifteen (15) days, an enlisted member shall receive the pay
14 and allowances as prescribed for an enlisted member of
15 corresponding grade when on active duty in federal service.

16 (3) The pay and allowances provided for in this
17 section may not be paid when pay and allowances for the
18 active duty is provided out of federal funds.

19 Section 54. There is a new section to be numbered
20 77-2004, R.C.M. 1947, which reads as follows:

21 77-2004. Allowances for incidental expenses. Each
22 commanding officer may receive an allowance for the
23 incidental expenses of his command.

24 Section 55. There is a new section to be numbered
25 77-2005, R.C.M. 1947, which reads as follows:

1 77-2005. Pensions -- benefits. (1) A member of the
2 organized militia who is wounded, disabled, or dies while on
3 duty in the service of this state shall receive:

4 ~~(a) -- Payment for required medical care incurred while~~
5 ~~performing a service for this state;~~

6 ~~(b) -- His military pay while he is unable to work,~~
7 ~~pending the award of a pension;~~

8 ~~(c) -- A lump sum death benefit of seven thousand five~~
9 ~~hundred dollars -- (\$7,500) -- paid to the beneficiaries he may~~
10 ~~designate; if no designation of beneficiary is made by the~~
11 ~~member, the lump sum death benefit shall be paid to the~~
12 ~~member's estate;~~

13 ~~(2) -- If a member of the organized militia is~~
14 ~~permanently disabled due to an injury while he is on active~~
15 ~~duty and he is performing a service for this state, he shall~~
16 ~~receive a like pension or reward that persons under similar~~
17 ~~circumstances would receive while in federal service;~~

18 ~~(3) -- A pension may not be granted for a disability~~
19 ~~received by a member of the organized militia while in~~
20 ~~federal service, or while proceeding to or returning from~~
21 ~~federal service. THE SAME BENEFITS THAT WOULD HAVE BEEN~~
22 ~~RECEIVED IF THE MEMBER HAD BEEN IN FEDERAL SERVICE.~~
23 ~~HOWEVER, NO BENEFITS MAY BE GRANTED OR PAID TO A MEMBER IF~~
24 ~~THE MEMBER RECEIVES A SIMILAR BENEFIT FROM THE FEDERAL~~
25 ~~GOVERNMENT FOR THE INJURIES OR DEATH SUSTAINED WHILE ON~~

1 DUTY.

2 Section 56. There is a new section to be numbered
3 77-2006, R.C.M. 1947, which reads as follows:

4 77-2006. Armories. (1) A county, city, or town may
5 convey or lease real property to the state for armories or
6 other military facilities.

7 (2) A county, city, or town in which a unit of the
8 national guard is organized and regularly stationed may
9 provide any part of the funds to build an armory. The
10 armory must be of sufficient size, and suitable for the
11 drill of the unit.

12 Section 57. There is a new section to be numbered
13 77-2007, R.C.M. 1947, which reads as follows:

14 77-2007. Lease of real property for armories, etc.
15 The department of military affairs may lease real property
16 for armories or other military facilities.

17 Section 58. There is a new section to be numbered
18 77-2101, R.C.M. 1947, which reads as follows:

19 77-2101. Actions against members of the organized
20 militia. When an action is commenced in a court against a
21 member of the organized militia for an act done in his
22 official capacity in the discharge of his duty, or for an
23 alleged omission to do an act which it was his duty to
24 perform, the defendant shall be defended by the attorney
25 general at the expense of this state, but private counsel

1 may be employed by the defendant.

2 Section 59. There is a new section to be numbered
3 77-2102, R.C.M. 1947, which reads as follows:

4 77-2102. Right of way while performing military duty.
5 (1) The commanding officer of a unit of the organized
6 militia parading or performing any military duty in a street
7 or highway may require all persons on the street or highway
8 to yield the right of way to troops. Motor vehicles
9 traveling in military convoy shall be accorded the right of
10 way on all streets and highways.

11 (2) The exercise of the right of way provided for in
12 this section may not interfere with the carriage of the
13 United States mail, or with the progress of an ambulance, or
14 members of a police or fire department.

15 (3) A person who violates this section is guilty of a
16 misdemeanor.

17 Section 60. There is a new section to be numbered
18 77-2103, R.C.M. 1947, which reads as follows:

19 77-2103. Depriving members of the organized militia of
20 employment. (1) A person may not willfully deprive a member
21 of the organized militia of his employment or prevent his
22 being employed, or obstruct or annoy a member in respect to
23 his trade, business, or employment, because he is a member
24 of the organized militia.

25 (2) A person may not dissuade any person from

1 enlisting in the organized militia, by threatening to
2 injure, or injuring his business, employment, or trade.

3 (3) A person who violates this section is guilty of a
4 misdemeanor.

5 Section 61. There is a new section to be numbered
6 77-2104, R.C.M. 1947, which reads as follows:

7 77-2104. Leave of absence of state employees attending
8 training camp or similar training program. A state, city,
9 or county employee who is a member of the organized militia
10 of this state or who is a member of the organized or
11 unorganized reserve corps or military forces of the United
12 States, and who has been an employee for a period of six (6)
13 months, shall be given leave of absence with pay for a
14 period of time not to exceed fifteen (15) working days in a
15 calendar year for attending regular encampments, training
16 cruises, and similar training programs of the organized
17 militia or of the military forces of the United States.
18 This leave may not be charged against the employee's annual
19 vacation time.

20 Section 62. There is a new section to be numbered
21 77-2105, R.C.M. 1947, which reads as follows:

22 77-2105. Authority of commanding officer. The
23 commanding officer at any drill, parade, encampment, or
24 other duty may order those under his command to perform any
25 military duty he requires. The commanding officer may

1 arrest, for the time of the drill, parade, encampment, or
2 other duty, an officer or enlisted man who disobeys the
3 orders of his superior officer.

4 Section 63. There is a new section to be numbered
5 77-2106, R.C.M. 1947, which reads as follows:

6 77-2106. Trespassers and disturbers may be placed in
7 arrest. (1) The commanding officer may arrest or authorize
8 the arrest of a person who trespasses upon a camp or parade
9 ground, armory, arsenal, rifle range, or any other place
10 devoted to or used for military purposes.

11 (2) The commanding officer may arrest a person who
12 interrupts, molests, or disturbs the orderly discharge of
13 duty by those under arms, disturbs or prevents the passage
14 of troops going to or returning from any duty, or assaults a
15 member of the uniformed militia while that member is
16 performing any military duty.

17 (3) A person who is arrested under this section shall
18 be transferred to the civil authorities in the county where
19 the offense was committed.

20 (4) A person ~~arrested-under~~ VIOLATING this section is
21 guilty of a misdemeanor.

22 Section 64. There is a new section to be numbered
23 77-2107, R.C.M. 1947, which reads as follows:

24 77-2107. Unlawful sale or detention of military
25 property. A person may not conceal, sell, dispose of, offer

1 for sale, purchase, retain after demand made by an officer,
2 or in any manner pledge or pawn any arms, equipment, or
3 other military property issued by the United States or this
4 state for use of the militia. A person violating this
5 section is guilty of a misdemeanor.

6 Section 65. There is a new section to be numbered
7 77-2108, R.C.M. 1947, which reads as follows:

8 77-2108. Unlawful wearing of uniform. A person may
9 not wear the uniform or insignia issued or authorized for
10 use by the organized militia, who is not a member of the
11 organized militia. A person violating this section is
12 guilty of a misdemeanor.

13 Section 66. There is a new section to be numbered
14 77-2201, R.C.M. 1947, which reads as follows:

15 77-2201. Organization and composition. The home guard
16 may be organized, maintained, and disbanded at the
17 discretion of the governor, in accordance with federal law
18 and regulation, when additional defense forces are needed in
19 this state. The home guard shall be composed of officers
20 assigned to it, and any able-bodied citizen of this state
21 who volunteers to serve in it. If additional persons are
22 needed in the home guard, members of the unorganized militia
23 shall serve if enrolled by draft or otherwise as provided by
24 law and regulation.

25 Section 67. There is a new section to be numbered

1 77-2202, R.C.M. 1947, which reads as follows:

2 77-2202. Governor may prescribe rules. The home
3 guard shall be organized, armed, equipped, maintained,
4 disciplined, governed, administered, and trained under rules
5 prescribed by the governor. These rules shall conform to
6 federal law and regulations.

7 Section 68. There is a new section to be numbered
8 77-2203, R.C.M. 1947, which reads as follows:

9 77-2203. Use of armories and equipment. The governor
10 may make available to the home guard the facilities of state
11 armories and their equipment and any other state land and
12 property as may be available. The governor may requisition
13 from the federal government for the use of the home guard,
14 arms, ammunition, clothing, equipment, and other items in
15 accordance with federal law and regulations. The governing
16 body of a county, municipality, or school district may make
17 available to the home guard any premises, facilities,
18 equipment, or other property belonging to or under the
19 control of the county, municipality, or school district.

20 Section 69. There is a new section to be numbered
21 77-2204, R.C.M. 1947, which reads as follows:

22 77-2204. Pay--allowances--pensions--benefits. (1) An
23 officer or member of the home guard on active duty in the
24 service of this state shall receive the same pay and
25 allowances as prescribed for officers and enlisted members

1 of the militia under section 77-2003.

2 (2) A member of the home guard who is wounded,
3 disabled, or dies while on active duty in the service of
4 this state, shall receive the same pensions and benefits as
5 prescribed for members of the organized militia under
6 section 77-2005.

7 Section 70. Section 82A-1401, R.C.M. 1947, is amended
8 to read as follows:

9 "82A-1401. Department of military affairs ~~---creation~~
10 ~~-- head. There is created a department of military affairs.~~
11 ~~The department head is the adjutant general of the state,~~
12 ~~who shall be appointed and serve in the same manner as are~~
13 ~~directors in section 82A-106 of this act. In addition, the~~
14 ~~qualifications of the adjutant general remain as prescribed~~
15 ~~in section 77-117, R.C.M. 1947. In addition, the~~
16 adjutant general shall have the qualifications as prescribed
17 in section 82A-1405."

18 Section 71. There is a new section to be numbered
19 82A-1405, R.C.M. 1947, which reads as follows:

20 82A-1405. Adjutant general -- qualifications -- salary
21 -- acting adjutant general. (1) The adjutant general
22 shall:

23 (a) Have the rank of major general;

24 (b) Be selected from the active list of the national
25 guard of this state;

1 (c) Be federally recognized in the rank of lieutenant
2 colonel or higher, immediately preceding his appointment;

3 (d) Have had at least ten (10) years of service as an
4 officer of the active national guard of this state during
5 the fifteen (15) years immediately preceding his
6 appointment.

7 (2) A salary may not be paid to the adjutant general
8 by the state, when he is on extended active duty in federal
9 service, or is receiving pay as a civilian employee of the
10 federal government.

11 (3) If, by reason of call or draft of officers of the
12 Montana national guard into federal service, there is no
13 officer having the qualifications as set forth in this
14 section for adjutant general, then any officer of the
15 national guard may be appointed as acting adjutant general.

16 Section 72. There is a new section to be numbered
17 82A-1406, R.C.M. 1947, which reads as follows:

18 82A-1406. Assistant adjutant generals. (1) The
19 adjutant general shall appoint, with the approval of the
20 governor, an assistant adjutant general for the army
21 national guard to be selected from the active list of the
22 army national guard, and an assistant adjutant general for
23 the air national guard to be selected from the active list
24 of the air national guard.

25 (2) Each assistant adjutant general shall have the

1 qualifications set forth in section 82A-1405 for appointment
2 as adjutant general. However, they shall have the rank of
3 brigadier general.

4 Section 73. Sections 32-1701, 77-101 through 77-163,
5 77-201 through 77-214, 77-301, 77-401 through 77-420,
6 77-1101, 77-1201 through 77-1215, 77-1301, 77-1305, 77-1501,
7 77-1504, 82-207 through 82-211, 82A-1402 through 82A-1404,
8 R.C.M. 1947, are repealed.

-End-

FEBRUARY 18, 1974
PROCEEDINGS OF THE
CONSTITUTION, ELECTIONS AND
FEDERAL RELATIONS COMMITTEE

The meeting was called to order by Chairman Lombardi. The secretary called roll; Members excused were Representatives Haines, Hall, Kendall and Kosena. Representative Watt was absent.

SENATE BILL 453:-- Senator Deschamps, sponsor for the bill, spoke on the bill briefly saying that it was mainly a recodification bill. Mr. Melbe was a witness for the bill. Questions were asked from the committee and a motion was made that the bill be concurred in. The committee vote was that the bill BE CONCURRED IN.

SENATE JOINT RESOLUTION 51: Senator Darrow, sponsor for the bill, stated that the bill was for legislative modernization. A motion was made that the bill be not concurred in. The committee vote was that the bill BE NOT CONCURRED IN.

HOUSE BILL 767: This bill was Representative Halvorsen's. It was heard at a previous meeting and she wanted the chance to get it out onto the floor. The committee made several amendments and a motion was made that the bill do pass as amended. The committee vote was DO PASS AS AMENDED. Negative votes were cast by Representatives Greely and Harper.

With no further business, the meeting was adjourned.

Jerry Lombardi
Jerry Lombardi, Chairman

Lauri Peterson
Lauri Peterson, Secretary

MINUTES OF THE MEETING
EXECUTIVE REORGANIZATION COMMITTEE
MONTANA STATE SENATE

January 18, 1974

The third meeting of the Executive Reorganization Committee was called to order by Chairman Keenan on January 18, 1974, at Room 402 of the State Capitol Building at 12 noon.

All members of the committee were present except Senators Boylan, Carl, and McOmber.

Discussion was held on SB 453. General Thode, Assistant Adjutant General, Col. Barfknecht and Phil Strobe, Chief of Staff, represented the office of General Womack. General Thode explained the amendments to SB 453.

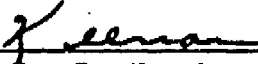
- 1) Amend page 2, line 6, by deleting the words "department of law enforcement and public safety" and substituting in lieu thereof, the words, "department of justice".
- 2) Pages 38 and 39, lines 10 through 25 on page 38 and lines 1 and 2 on page 39, by deleting all matter therein in its entirety and substituting therefor, after the word, "receive" on page 38, line 9, the following words: "the same benefits he would have received if he had been in federal service. However, no benefits may be granted or paid to a member if the member receives a similar benefit from the federal government for the injuries or death sustained while on duty".
- 3) Page 42, line 21, delete the words "arrested under" and substitute therefor the word "violating".

Senator Rosell moved to amend the proposed amendment Part (2) to read as follows: "the same benefits that would have been received if the member had been in federal service. Senator Deschamps moved to pass as amended and seconded by Senator Rosell. The proposed amendments met with unanimous approval.

Chairman Keenan mentioned that quite a work load faces the committee and asked opinion of the committee as to which bills would be considered at the next meeting. It was decided that SB 461 would be discussed on January 23.

Chairman Keenan introduced Margaret Borg, legal advisor and Alan Taylor as researcher.

With no further business the meeting adjourned.


P. J. KEENAN, CHAIRMAN

PROPOSED COMMITTEE AMENDMENTS TO SENATE BILL 453
Third Reading

- - - - -

1) Amend page 2, line 6, by deleting the words "department of law enforcement and public safety" and ^{inserting} substituting in lieu thereof, the words, "department of justice".

2) Pages 38 and 39, lines 10 through 25 on page 38 and lines 1 and 2 on page 39, by deleting all matter therein in its entirety and substituting therefor, after the word, "receive".

on page 38, line 9, the following words: "The same benefits ^{that} ~~he~~ ^{been} would have received if ~~he~~ ^{member} had been in federal service.

However, no benefits may be granted or paid to a member if the member receives a similar benefit from the federal government for the injuries or death sustained while on duty".

3) Page 42, line 21, delete the words "arrested under" and ~~sub-~~stitute therefor the word "violating".

^{insert}

The interlocal co-operative agreement authorized in chapter 49 of Title 16, R.C.M. 1947, may be used to establish a multi-district special education program."

Approved March 4, 1974

CHAPTER NO. 94

AN ACT FOR REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF MILITARY AFFAIRS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1702, R.C.M. 1947, is amended to read as follows:

"32-1702. **Powers and duties.** The *department of military affairs* shall:

(1) *Cooperate* with the agencies of this and other states and of the federal government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense.

(2) *Coordinate* the activities of the *department of highways* and the *department of justice* in a manner which will best serve to *carry out* any such plan for the rapid and safe movement of troops, vehicles, and materials as referred to in paragraph (1) of this section.

(3) *Solicit* the *cooperation* of officials of the various political subdivisions of the state in the proper execution of *these* plans.

(4) *Have the authority to take* an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense."

Section 2. Section 32-1703, R.C.M. 1947, is amended to read as follows:

"32-1703. **Highway safety and driver training program.** The *department of military affairs* may, in conjunction with any interested public or private agencies, conduct a highway safety and driver training program as an aid to the national defense."

Section 3. Section 77-801, R.C.M. 1947, is renumbered section 16-2927, and is amended to read as follows:

"16-2927. **County clerks to record certificates of discharge.** It is the duty of the county clerk of any county of *this* state to record, without charge, in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces."

Section 4. Section 77-901, R.C.M. 1947, is renumbered section 75-8611, and is amended to read as follows:

"75-8611. **Honorably discharged veterans — free tuition at university of Montana.** All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of *this* state at the time of their entry into the United States forces shall have free fees and tuition in any of the units of the university of Montana, including the law and medical departments, and for extra studies in any of the units of the university of Montana. *However*, this act *does* not apply to persons who qualify under the provisions of the "Servicemen's Readjustment Act of 1944," being "Public Law 346 of the seventy-eighth Congress, chapter 268, second session" and "Public Law 16 of the seventy-eighth Congress, chapter 22, first session," and all acts supplementary and amendatory thereof."

Section 5. Section 77-909, R.C.M. 1947, is renumbered section 75-8612, and is amended to read as follows:

"75-8612. **War orphans' attendance to be without fees.** (1) *The board of regents of higher education may* waive the charges for the matriculation, tuition, and *any* educational fees, for *the* children (of members of the armed forces of the United States who served on active duty during World War II or the Korean or Vietnam conflicts and who, at the time of entry into *the* service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States) *who* attend any of the units of the greater university of Montana.

(2) The educational assistance to which an eligible person is entitled to under this act may be afforded him during the period beginning on his eighteenth (18) birthday, or on the successful completion of his secondary schooling, whichever first occurs, and ending on his twenty-third (23) birthday.

(3) If he serves on duty with the armed forces as an eligible person after his eighteenth (18) birthday but before his twenty-third (23) birthday, then *the* period shall end five (5) years after his first discharge or release from duty with the armed forces excluding from *the* five (5) years all periods during which the eligible person served on active duty before August 1, 1963, pursuant to (a) a call or order thereto issued to him as a reserve after July 30, 1961, or (b) an extension of an enlistment, appointment or period of duty with the armed forces *under* the laws of the United States. *This* period *may not* be extended beyond his thirty-first (31) birthday by reason of this paragraph."

Section 6. Section 77-910, R.C.M. 1947, is renumbered section 75-8613, and is amended to read as follows:

"75-8613. **Board of regents of higher education to determine eligibility.** The board of *regents of higher* education shall determine the eligibility of a child who *makes* application for the benefits provided for in this act. A finding by the United States veterans' administration that

a member was killed in action or died as the result of injury or other disability incurred in action is binding upon the board, but in the absence of such a finding the board shall determine the facts."

Section 7. Section 77-911, R.C.M. 1947, is renumbered section 75-8614, and is amended to read as follows:

"75-8614. **Supervision of attendance and charges.** The board of regents of higher education shall satisfy itself of the attendance of a child at an institution."

Section 8. Section 77-1302, R.C.M. 1947, is renumbered section 77-2301, and is amended to read as follows:

"77-2301. **Policy and purpose.** Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, and natural disasters, and in order to insure that preparation of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is hereby found and declared to be necessary:

(1) To authorize the creation of local organizations for civil defense in the political subdivisions of the state; and

(2) To provide for the rendering of mutual aid among the political subdivisions of the state, and with other states, and with the federal government with respect to carrying out of civil defense functions."

Section 9. Section 77-1303, R.C.M. 1947, is renumbered section 77-2302, and is amended to read as follows:

"77-2302. **Definitions.** As used in this chapter the term "civil defense" means the preparation for and the carrying out of emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, and catastrophes of all types which shall endanger any community in the state, or the lives or property of the inhabitants thereof, including storms, floods, explosions, earthquakes, epidemics, and fires. These functions include fire-fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons of defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, plant protection, temporary restoration of public utility services, and other functions related to civilian protection. The term "political subdivisions" means the counties, cities, towns and villages in this state."

Section 10. Section 77-1304, R.C.M. 1947, is renumbered section 77-2303, and is amended to read as follows:

"77-2303. **Responsibility for civil defense.** (a) The department of military affairs is responsible to the governor for carrying out the program for civil defense of this state. The department shall coordinate the

activities of all organizations for civil defense within the state, and maintain liaison with and cooperate with civil defense agencies and organizations of other states, of the federal government, and Canada, and have any additional authority, duties, and responsibilities authorized by this chapter as may be prescribed by the governor.

(b) In providing assistance under this chapter, state agencies shall cooperate to the fullest extent possible with each other and with local governments, relief agencies, and the American National Red Cross, but nothing contained in this chapter limits or in any way affects the responsibilities of the American National Red Cross under the act approved January 5, 1905 (33 Stat. 559), as amended."

Section 11. Section 77-1306, R.C.M. 1947, is renumbered section 77-2304, and is amended to read as follows:

"77-2304. **Civil defense duties of the governor.** The governor is responsible for carrying out this chapter. The governor shall utilize the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of this chapter."

Section 12. Section 77-1307, R.C.M. 1947, is renumbered section 77-2305, and is amended to read as follows:

"77-2305. **Duties of department.** The department shall:

(1) Prepare a comprehensive plan and program for the civil defense of this state. This plan and program shall be integrated into and coordinated with the civil defense plans of the federal government, other states, and Canada, to the fullest possible extent, and to coordinate the preparation of plans and programs for civil defense by the political subdivisions of this state.

(2) Sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to above.

(3) In accordance with the plan and program for the civil defense of this state, ascertain the requirements of the state or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and plan for the procurement of supplies, medicine, materials, and equipment that may be necessary. It shall make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this act. It shall institute training programs and public information programs, and take all other preparatory steps, including the partial or full mobilizations of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need."

Section 13. Section 77-1308, R.C.M. 1947, is renumbered section 77-2306, and is amended to read as follows:

"77-2306. **Mutual-aid arrangements.** (1) The director of each local organization of civil defense may develop or cause to be developed mutual-

aid arrangements, with other public and private agencies within this state for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. *These* arrangements shall be consistent with the state civil defense plan and program, and in time of emergency each local organization for civil defense *shall* render assistance in accordance with the provisions of *the* mutual-aid arrangements.

(2) The director of each local organization for civil defense may assist in negotiation of reciprocal mutual-aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof, and shall carry out arrangements or any such agreements or any such agreement relating to the local and political subdivision."

Section 14. Section 77-1309, R.C.M. 1947, is renumbered section 77-2307, and is amended to read as follows:

"77-2307. Local organization for civil defense. (1) Each political subdivision of this state *shall* establish a local organization for civil defense in accordance with the state civil defense plan and program. The executive officer or governing body of the political subdivisions *may* appoint a director who shall have direct responsibility for the organization, administration, and operation of *the* local organization for civil defense, subject to the direction and control of *the* executive officer or governing body. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivisions within which it is organized.

(2) Each political subdivision shall:

(a) *Direct* and *coordinate* the development of civil defense plans and programs in accordance with the policies and plans set by the federal civil defense *agency and the department of military affairs*;

(b) *Appoint*, employ, remove, or provide without compensation, voluntary air raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian defense workers;

(c) *Establish* a primary and one or more secondary control centers to serve as command posts during an emergency;

(d) *Budget* for and appropriate funds for the local administration of this *chapter* and local civil defense organizations."

Section 15. Section 77-1310, R.C.M. 1947, is renumbered section 77-2308, and is amended to read as follows:

"77-2308. Immunity from liability. (1) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker, or member of any agency engaged in civilian defense activity. *This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workmen's compensation law or any pension law or any act of Congress.*

(2) Neither the state nor any political subdivision of the state, nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity, *nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with this chapter, or any order, rule, or regulation promulgated under the provisions of this chapter, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity."*

Section 16. Section 77-1311, R.C.M. 1947, is renumbered section 77-2309, and is amended to read as follows:

"77-2309. Authority to accept services, gifts, grants, and loans. Whenever the federal government or any agency or officer thereof, or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the state, acting through the governor, or *the* political subdivision, acting through its executive officer or governing body, may accept *the* offer and upon *the* acceptance the governor of the state or executive officer or governing body of *the* political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive *the* services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer."

Section 17. Section 77-1312, R.C.M. 1947, is renumbered section 77-2310, and is amended to read as follows:

"77-2310. Political activity prohibited. An organization for civil defense established under this *chapter may not* participate in any form of political activity, nor *may* it be employed directly or indirectly for political purposes."

Section 18. Section 77-1313, R.C.M. 1947, is renumbered section 77-2311, and is amended to read as follows:

"77-2311. Civil defense personnel. A person *may not* be employed or associated in any capacity in any civil defense organization established under this *chapter* who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Montana, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the Montana civil defense agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence."

Section 19. Section 77-1502, R.C.M. 1947, is renumbered section 77-2401, and is amended to read as follows:

"77-2401. **Legislative findings — policy of state.** (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for, and respond promptly to, the problems created by an attack. Therefore, it is hereby found and declared to be necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this chapter.

(2) It is further declared to be the purpose of this chapter and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available man power, resources, and facilities in an emergency."

Section 20. Section 77-1503, R.C.M. 1947, is renumbered section 77-2402, and is amended to read as follows:

"77-2402. **Definition of terms.** Unless the context requires otherwise, in this chapter:

(1) "Emergency Resources Management Plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States, and

shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state."

Section 21. Section 77-1505, R.C.M. 1947, is renumbered section 77-2403, and is amended to read as follows:

"77-2403. **Governor's powers and duties under act.** (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this chapter, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this chapter, and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders, rules, and regulations to carry out this chapter within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government."

Section 22. Section 77-1506, R.C.M. 1947, is renumbered section 77-2404, and is amended to read as follows:

"77-2404. **Proclamation of emergency — governor's powers during emergency.** (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the post-attack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a post-attack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual, unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within forty-five (45) days.

(2) During the period when the proclamation issued under subsection (1) of this section is in force, or during the continuance of any emergency declared by the president of the United States or the congress calling for post-attack recovery and rehabilitation activities, subject to the limitations set forth in this chapter, and in a manner consistent with any rules, regulations, or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules, regulations, and orders to:

(a) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use,

sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;

(b) Prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) Take such other action as may be necessary for the management of resources following an attack.

(3) All rules, regulations, and orders issued *under* authority conferred by this *chapter* have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section, when a copy of the rule, regulation, or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be *considered* a complete and sufficient substitute. All existing laws, ordinances, rules, regulations, and orders inconsistent with the provisions of this *chapter*, or any rule, regulation or order issued under the authority thereof, shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised *under* a proclamation or emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction, or as to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress; *however* the proclamation shall terminate automatically six (6) months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature."

Section 23. Section 77-1507, R.C.M. 1947, is renumbered section 77-2405, and is amended to read as follows:

"77-2405. **Judicial inquiry as to emergency proclamation and facts.** Every proclamation and the facts related *in the proclamation* issued under this *chapter* is subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether *the* action was reasonable under the circumstances."

Section 24. Section 77-1508, R.C.M. 1947, is renumbered section 77-2406, and is amended to read as follows:

"77-2406. **Penalty for violation of rules and regulations.** A person violating any of the rules, regulations or orders adopted and promulgated

under section 77-2404 shall, upon conviction, be subject to a fine of not to exceed ten thousand dollars (\$10,000) or to a term of imprisonment of not to exceed five (5) years, or both."

Section 25. There is a new section to be numbered 77-1601, R.C.M. 1947, which reads as follows:

77-1601. **Definitions.** Unless the context requires otherwise, in Title 77:

(1) "Militia" means all the military forces of this state, whether organized or active or inactive.

(2) "National guard" means the army national guard and the air national guard.

(3) "Officer" means commissioned or warrant officer.

Section 26. There is a new section to be numbered 77-1602, R.C.M. 1947, which reads as follows:

77-1602. **Classes of militia.** The classes of the militia are:

(1) The organized militia, which consists of the national guard and the Montana home guard;

(2) The unorganized militia, which consists of the members of the militia who are not members of the organized militia.

Section 27. There is a new section to be numbered 77-1603, R.C.M. 1947, which reads as follows:

77-1603. **Federal regulations to govern.** Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, including the Uniform Code of Military Justice, shall, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state.

Section 28. There is a new section to be numbered 77-1604, R.C.M. 1947, which reads as follows:

77-1604. **Rules by governor.** The governor may prescribe rules to carry out his functions and duties under this title, and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

Section 29. There is a new section to be numbered 77-1605, R.C.M. 1947, which reads as follows:

77-1605. **Proclamation of martial rule.** When the militia is employed in aid of civil authority, the governor may by proclamation, declare any part of a county or municipality in which troops are serving to be subject to martial rule.

Section 30. There is a new section to be numbered 77-1606, R.C.M. 1947, which reads as follows:

77-1606. **Powers and duties of department of military affairs.**

Under the direction of the governor, the department of military affairs provided for in Title 82A, chapter 14 shall:

(1) Keep a roster of all active, inactive, retired officers and enlisted persons of the militia of this state;

(2) Supervise, administer, and coordinate civil defense and disaster control activities;

(3) Recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) Maintain the archives, and keep the records and documents required, by law or regulation, to be filed with the United States department of defense;

(5) Supervise, administer, and coordinate the activities of the selective service system for which the governor is responsible;

(6) Establish and maintain the headquarters required for the militia;

(7) Exercise the powers vested in it, and perform any other duty and function required of it by the governor, and by federal and state laws and regulations.

Section 31. There is a new section to be numbered 77-1701, R.C.M. 1947, which reads as follows:

77-1701. **Officers.** (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board, and the nature and scope of examinations, shall be prescribed by federal law or regulation, or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office, or until he is regularly retired, discharged, dismissed, or placed in the reserve.

Section 32. There is a new section to be numbered 77-1702, R.C.M. 1947, which reads as follows:

77-1702. **Oath of office.** (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office: "I,....., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of.....in the.....upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office, and a new appointment shall be made.

Section 33. There is a new section to be numbered 77-1703, R.C.M. 1947, which reads as follows:

77-1703. **Retirement of officers.** (1) An officer of the national guard shall be retired by order of the governor, for the following reasons:

(a) Upon reaching his sixtieth (60) birthday; or

(b) His unfitness for military service because of a physical disability.

(2) An officer is retired with the grade and rank held by him at the time of retirement.

Section 34. There is a new section to be numbered 77-1704, R.C.M. 1947, which reads as follows:

77-1704. **Resignation of officers.** An officer may resign, but the resignation is not effective until it has been accepted by the governor.

Section 35. There is a new section to be numbered 77-1705, R.C.M. 1947, which reads as follows:

77-1705. **Vacating commissions or warrants.** The commission or warrant of an officer shall be vacated:

(1) Upon acceptance by the governor of the resignation of the officer; or

(2) By an order of the governor discharging the officer for:

(a) Failure to maintain his qualifications for federal recognition;

(b) The scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;

(c) A change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;

(d) His absence from duty without leave for more than three (3) months; or

(e) Under the recommendation of a board of examination or the sentence of a court martial.

Section 36. There is a new section to be numbered 77-1706, R.C.M. 1947, which reads as follows:

77-1706. **Examination as to fitness.** (1) The governor, when he considers it necessary, may order an officer to appear before a board of examination. The board of examination shall consist of three (3) officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) Inquire into the fitness for military service due to physical disability of an officer under section 77-1703 (1)(b).

(b) Inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under section 77-1705 (2)(e).

(2) The board, under section 77-1703 (1)(b), may recommend the retention of the officer being examined, or his retirement because of a physical inability to perform active service.

(3) The board, under section 77-1705 (2)(e), may recommend the discharge and the vacating of his commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

Section 37. There is a new section to be numbered 77-1707, R.C.M. 1947, which reads as follows:

77-1707. Uniform allowance for officers. (1) Every officer of the organized militia shall, within sixty (60) days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment.

(2) There shall be paid annually on April 1, a uniform allowance to each properly uniformed and equipped officer of the organized militia.

Section 38. There is a new section to be numbered 77-1708, R.C.M. 1947, which reads as follows:

77-1708. Officer need not vacate civil office. A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

Section 39. There is a new section to be numbered 77-1801, R.C.M. 1947, which reads as follows:

77-1801. Terms of enlistment. Except as otherwise provided by federal law or regulation, enlistments, re-enlistments, and extension of enlistments shall be for periods as prescribed by the department.

Section 40. There is a new section to be numbered 77-1802, R.C.M. 1947, which reads as follows:

77-1802. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or re-enlists shall take and subscribe to the following oath of enlistment: "I hereby acknowledge to have voluntarily enlisted this.... day of..... in the..... of the United States and the state of Montana for a period of..... years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of American and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any commissioned officer of the organized militia, or any commis-

sioned officer of the armed forces of the United States detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men.

Section 41. There is a new section to be numbered 77-1803, R.C.M. 1947, which reads as follows:

77-1803. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the organized militia until six (6) months after the termination of that emergency.

Section 42. There is a new section to be numbered 77-1804, R.C.M. 1947, which reads as follows:

77-1804. Retirement of enlisted members. An enlisted member of the national guard shall be retired by order of the governor, for the following reasons:

(1) Upon reaching his sixtieth (60) birthday, or

(2) His unfitness for military service because of a physical disability.

Section 43. There is a new section to be numbered 77-1901, R.C.M. 1947, which reads as follows:

77-1901. Courts — composition, jurisdiction, powers, and procedures. The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts, and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

Section 44. There is a new section to be numbered 77-1902, R.C.M. 1947, which reads as follows:

77-1902. Persons subject. All members of the organized militia, and all other persons lawfully called, ordered, or drafted for duty in the organized militia from the dates they are required by the terms of the call, order, or other directive to serve, are subject to this chapter.

Section 45. There is a new section to be numbered 77-1903, R.C.M. 1947, which reads as follows:

77-1903. Territorial applicability. (1) This chapter is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

Section 46. There is a new section to be numbered 77-1904, R.C.M. 1947, which reads as follows:

77-1904. **Persons authorized to execute process.** All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff, or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute them and make return thereof to the officer issuing them.

Section 47. There is a new section to be numbered 77-1905, R.C.M. 1947, which reads as follows:

77-1905. **Confinement of persons committed by military court.** The keepers of a municipal or county jail shall receive a person committed to them by a military court, and shall confine them in accordance with the direction of the court.

Section 48. There is a new section to be numbered 77-1906, R.C.M. 1947, which reads as follows:

77-1906. **Reporter and witness fees.** A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as are provided by law for similar services in civil courts.

Section 49. There is a new section to be numbered 77-1907, R.C.M. 1947, which reads as follows:

77-1907. **Fees of civil officers, records.** Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

Section 50. There is a new section to be numbered 77-1908, R.C.M. 1947, which reads as follows:

77-1908. **Trial by civil authority; when authorized.** In a case where the offense charged is also an offense against civil authority, the convening authority of a court martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

Section 51. There is a new section to be numbered 77-2001, R.C.M. 1947, which reads as follows:

77-2001. **Property remains public property.** All property issued to organizations and members of the organized militia remains public property.

Section 52. There is a new section to be numbered 77-2002, R.C.M. 1947, which reads as follows:

77-2002. **Organized militia called into service — general fund.** When the organized militia is ordered into active duty as provided for in article VI, section 13 of the constitution of this state, warrants for pay and expenses shall be drawn upon the general fund of the state.

Section 53. There is a new section to be numbered 77-2003, R.C.M. 1947, which reads as follows:

77-2003. **Pay and allowances.** (1) An officer ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first fifteen (15) days of service. After fifteen (15) days, an enlisted member shall receive the pay and allowances as prescribed for an enlisted member of corresponding grade when on active duty in federal service.

(3) The pay and allowances provided for in this section may not be paid when pay and allowances for the active duty are provided out of federal funds.

Section 54. There is a new section to be numbered 77-2004, R.C.M. 1947, which reads as follows:

77-2004. **Allowances for incidental expenses.** Each commanding officer may receive an allowance for the incidental expenses of his command.

Section 55. There is a new section to be numbered 77-2005, R.C.M. 1947, which reads as follows:

77-2005. **Pensions — benefits.** (1) A member of the organized militia who is wounded, disabled, or dies while on duty in the service of this state shall receive the same benefits that would have been received if the member had been in federal service. However, no benefits may be granted or paid to a member if the member receives a similar benefit from the federal government for the injuries or death sustained while on duty.

Section 56. There is a new section to be numbered 77-2006, R.C.M. 1947, which reads as follows:

77-2006. **Armories.** (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size, and suitable for the drill of the unit.

Section 57. There is a new section to be numbered 77-2007, R.C.M. 1947, which reads as follows:

77-2007. **Lease of real property for armories, etc.** The department of military affairs may lease real property for armories or other military facilities.

Section 58. There is a new section to be numbered 77-2101, R.C.M. 1947, which reads as follows:

77-2101. **Actions against members of the organized militia.** When an action is commenced in a court against a member of the organized militia for an act done in his official capacity in the discharge of his duty, or for an alleged omission to do an act which it was his duty to perform, the defendant shall be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

Section 59. There is a new section to be numbered 77-2102, R.C.M. 1947, which reads as follows:

77-2102. **Right-of-way while performing military duty.** (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right-of-way to troops. Motor vehicles traveling in military convoy shall be accorded the right-of-way on all streets and highways.

(2) The exercise of the right-of-way provided for in this section may not interfere with the carriage of the United States mail, or with the progress of an ambulance, or members of a police or fire department.

(3) A person who violates this section is guilty of a misdemeanor.

Section 60. There is a new section to be numbered 77-2103, R.C.M. 1947, which reads as follows:

77-2103. **Depriving members of the organized militia of employment.** (1) A person may not willfully deprive a member of the organized militia of his employment or prevent his being employed, or obstruct or annoy a member in respect to his trade, business, or employment, because he is a member of the organized militia.

(2) A person may not dissuade any person from enlisting in the organized militia, by threatening to injure, or injuring his business, employment, or trade.

(3) A person who violates this section is guilty of a misdemeanor.

Section 61. There is a new section to be numbered 77-2104, R.C.M. 1947, which reads as follows:

77-2104. **Leave of absence of state employees attending training camp or similar training program.** A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States, and who has been an employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

Section 62. There is a new section to be numbered 77-2105, R.C.M. 1947, which reads as follows:

77-2105. **Authority of commanding officer.** The commanding officer

at any drill, parade, encampment, or other duty may order those under his command to perform any military duty he requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted man who disobeys the orders of his superior officer.

Section 63. There is a new section to be numbered 77-2106, R.C.M. 1947, which reads as follows:

77-2106. **Trespassers and disturbers may be placed in arrest.** (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who interrupts, molests, or disturbs the orderly discharge of duty by those under arms, disturbs or prevents the passage of troops going to or returning from any duty, or assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person violating this section is guilty of a misdemeanor.

Section 64. There is a new section to be numbered 77-2107, R.C.M. 1947, which reads as follows:

77-2107. **Unlawful sale or detention of military property.** A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia. A person violating this section is guilty of a misdemeanor.

Section 65. There is a new section to be numbered 77-2108, R.C.M. 1947, which reads as follows:

77-2108. **Unlawful wearing of uniform.** A person may not wear the uniform or insignia issued or authorized for use by the organized militia, who is not a member of the organized militia. A person violating this section is guilty of a misdemeanor.

Section 66. There is a new section to be numbered 77-2201, R.C.M. 1947, which reads as follows:

77-2201. **Organization and composition.** The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it, and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

Section 67. There is a new section to be numbered 77-2202, R.C.M. 1947, which reads as follows:

77-2202. **Governor may prescribe rules.** The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered, and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

Section 68. There is a new section to be numbered 77-2203, R.C.M. 1947, which reads as follows:

77-2203. **Use of armories and equipment.** The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

Section 69. There is a new section to be numbered 77-2204, R.C.M. 1947, which reads as follows:

77-2204. **Pay — allowances — pensions — benefits.** (1) An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under section 77-2003.

(2) A member of the home guard who is wounded, disabled, or dies while on active duty in the service of this state, shall receive the same pensions and benefits as prescribed for members of the organized militia under section 77-2005.

Section 70. Section 82A-1401, R.C.M. 1947, is amended to read as follows:

"82A-1401. **Department of military affairs — head.** There is a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in section 82A-106. *In addition, the adjutant general shall have the qualifications as prescribed in section 82A-1405.*"

Section 71. There is a new section to be numbered 82A-1405, R.C.M. 1947, which reads as follows:

82A-1405. **Adjutant general — qualifications — salary — acting adjutant general.** (1) The adjutant general shall:

- (a) Have the rank of major general;
- (b) Be selected from the active list of the national guard of this state;
- (c) Be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;
- (d) Have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state, when he is on extended active duty in federal service, or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.

Section 72. There is a new section to be numbered 82A-1406, R.C.M. 1947, which reads as follows:

82A-1406. **Assistant adjutant generals.** (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard, and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general shall have the qualifications set forth in section 82A-1405 for appointment as adjutant general. However, they shall have the rank of brigadier general.

Section 73. Sections 32-1701, 77-101 through 77-163, 77-201 through 77-214, 77-301, 77-401 through 77-420, 77-1101, 77-1201 through 77-1215, 77-1301, 77-1305, 77-1501, 77-1504, 82-207 through 82-211, 82A-1402 through 82A-1404, R.C.M. 1947, are repealed.

Approved March 11, 1974

CHAPTER NO. 95

AN ACT AMENDING SECTION 92-208, R.C.M. 1947, RELATING TO THE DISCRETION OF THE DIVISION OF WORKMEN'S COMPENSATION TO REVIEW A CORPORATE OFFICER'S ELECTION NOT TO BE BOUND; AND PROVIDING A PENALTY FOR FALSE STATEMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-208, R.C.M. 1947, is amended to read as follows:

"92-208. **Employees bound by act — election.** Every employee whose employer is bound by the provisions of this act shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer except that pursuant to such rules and regulations as the *division* shall from time to time promulgate, and subject in all cases to the *review* of the *division*, officers of private corporations may elect not to be bound as employees under the act by a written notice in the form provided by the *division*, served in the following manner:

- (1) If the employer has elected to be bound by the provisions of